

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH WAYNE LEAMING,

Plaintiff,

v.

JOHN DOE, WARDEN, FDC SEATAC, *et al.*,

Defendants.

Case No. C12-1724-RAJ-JPD

ORDER DECLINING TO SERVE
COMPLAINT AND GRANTING
PLAINTIFF LEAVE TO AMEND

Plaintiff Kenneth Wayne Leaming has submitted to the Court for filing a pleading entitled "Complaint to: Compel Performance; Inclusive of Declaratory and Injunctive Relief; and Tort Damages." The Court, having reviewed plaintiff's pleading, and the balance of the record, does hereby find and ORDER as follows:

(1) Plaintiff appears to allege in his pleading violations of his constitutional rights arising out of his incarceration at the Federal Detention Center in SeaTac, Washington ("FDC SeaTac"). Plaintiff identifies as defendants in this action the Warden of FDC SeaTac, FDC SeaTac, the United States Bureau of Prisons, and John Does 2-10 who are officers and

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employees at FDC SeaTac. Because plaintiff is seeking compensation for alleged violations of his constitutional rights against federal defendants, plaintiff's pleading is most properly construed as a civil rights action brought pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).

(2) In order to sustain a cause of action under *Bivens*, a plaintiff must satisfy the requirements of an action pursuant to 42 U.S.C. § 1983, except for the substitution of a federal actor in place of a state actor. *Van Strum v. Lawn*, 940 F.2d 406, 409 (9th Cir. 1991). Accordingly, he must show (1) that he suffered a violation of rights protected by the Constitution or created by federal statute, and (2) that the violation was proximately caused by a person acting under color of federal law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). To satisfy the second prong, a plaintiff must allege facts showing how individually named defendants caused or personally participated in causing the harm alleged in the complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

(3) The Court declines to order that plaintiff's complaint be served because his complaint is deficient in the following respects:

(a) Plaintiff identifies the Warden of FDC SeaTac, FDC SeaTac, and the United States Bureau of Prisons as defendants in this action. The Supreme Court has held that there can be no *Bivens* cause of action against the United States Government, a federal agency, or government officers in their official capacities. *FDIC v. Meyer*, 510 U.S. 471, 484–486 (1994). Thus, plaintiff may not proceed against the institution or the agency in this action.

Plaintiff may proceed against the Warden, but only if he is able to allege sufficient *specific* facts demonstrating that this individual personally participated in causing him harm of

1 constitutional dimension. If plaintiff elects to proceed against the Warden, he should identify
2 this individual by his proper name, information which should be readily available to plaintiff at
3 the institution.

4 (b) To the extent plaintiff intends to challenge the constitutionality of various aspects
5 of his confinement at FDC SeaTac, his claims are deficient because he fails to allege sufficient
6 facts to connect the harm alleged to the conduct of specific individuals. It is not sufficient for
7 plaintiff to simply allege that he has been denied access to legal materials, that mail has been
8 delayed, or that he has been retaliated against. Plaintiff must specifically identify the individuals
9 whose conduct is at issue, and he must identify those individuals in both the caption of his
10 complaint and in the body of his complaint. Any individual not identified by name in both
11 places will not be deemed a defendant in this action. If plaintiff elects to proceed against
12 individual officers or employees of FDC SeaTac, he must also set forth specific facts
13 demonstrating that the individuals whose conduct he has placed at issue personally participated
14 in causing him harm of federal constitutional dimension.

15 (c) To the extent plaintiff intends to challenge the fact of his current confinement, his
16 claims appear frivolous and, in any event, are not properly asserted in an action brought pursuant
17 to *Bivens*.

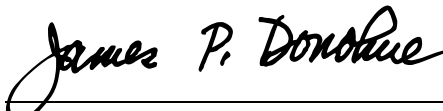
18 (4) Plaintiff may file an amended complaint curing the above noted deficiencies
19 within ***thirty (30) days*** of the date on which this Order is signed. The amended complaint must
20 carry the same case number as this one. If no amended complaint is timely filed, or if plaintiff
21 fails to correct the deficiencies identified in this Order, this Court will recommend that the action
22 be dismissed under 28 U.S.C. § 1915(e)(2)(B).
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1 Plaintiff is advised that Federal Rule of Civil Procedure 8(a) requires a “short and plain
2 statement” of the grounds for relief. Further, each averment in a complaint must be “simple,
3 concise, and direct.” Fed. R. Civ. P. 8(d). Failure to comply with Rules 8(a) and 8(d) may result
4 in dismissal with prejudice under Rule 41(b). *See Nevijel v. N. Coast Life Ins. Co.*, 651 F.2d 671,
5 673 (9th Cir. 1981).

6 (5) The Clerk is directed to send plaintiff the appropriate forms so that he may file an
7 amended complaint.¹ The Clerk is further directed to send copies of this Order to plaintiff and to
8 the Honorable Richard A. Jones.

9 DATED this 22nd day of January, 2013.

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11 JAMES P. DONOHUE
12 United States Magistrate Judge
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22 ¹ Plaintiff is not required to use the form provided by the Clerk. However, plaintiff is advised that any
23 amended pleading must provide all of the information required by the Court’s form and he must ensure that the
pleading otherwise conforms to the requirements of Rule 8 of the Federal Rules of Civil Procedure.